

02-0-0471

(Do Not Write Above This Line)

AN ORDINANCE

BY COUNCILMEMBER DEBI STARNES

AUTHORIZING THE MAYOR TO ENTER INTO AN  
AMENDED AND RESTATED WATER/SEWER  
REIMBURSEMENT AGREEMENT WITH ATLANTIC  
STATION, L.L.C.; AMENDING ORDINANCE  
00-0-1963; AND FOR OTHER PURPOSES.

- ☐ CONSENT REFER  
☐ REGULAR REPORT REFER  
☐ ADVERTISE & REFER  
☐ 1st ADOPT 2nd READ & REFER  
☒ PERSONAL PAPER REFER

Date Referred

3/4/02

Referred To:

*Mayor/Executive*

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred to \_\_\_\_\_

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd ☐ 3rd

Readings

☐ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

MAYOR'S ACTION

**AN ORDINANCE**

**02- ☉ -0471**

**BY COUNCILMEMBER DEBI STARNES**

**AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDED AND  
RESTATED WATER/SEWER REIMBURSEMENT AGREEMENT WITH  
ATLANTIC STATION, L.L.C.; AMENDING ORDINANCE 00-O-1963;  
AND FOR OTHER PURPOSES.**

WHEREAS, the City of Atlanta, by Resolution No. 99-R-1344, adopted by the City Council on October 4, 1999 and signed by the Mayor on October 5, 1999, has designated the Atlantic Steel Brownfield Redevelopment Area, adopted a redevelopment plan, and created the Tax Allocation District Number Two--Atlantic Steel (the "TAD") to facilitate to redevelopment of the area, the site of a former steel mill, into a mixed use community of homes, offices, shops, recreation, and hotels; and

WHEREAS, Atlantic Station, L.L.C. ("Atlantic Station") has acquired the real property located in the redevelopment area and is developing the property in accordance with the Atlantic Steel Brownfield Redevelopment Plan; and

WHEREAS, the redevelopment area contained no useable water supply or sanitary sewer infrastructure; and

WHEREAS, as part of implementation of the Redevelopment Plan, Atlantic Station has constructed the necessary water and sanitary sewer infrastructure; and

WHEREAS, to date Atlantic Station has expended the sum of \$21,584,835 for the water/sewer infrastructure improvements (the "Improvements"); and

WHEREAS, pursuant to Ordinance 00-O-1963, adopted by the Council on December 4, 2000 and signed by the Mayor on December 12, 2000, the City provided interim financing of \$10 million for construction of the Improvements and authorized execution of a contractual agreement; and

WHEREAS, in accordance with the provisions of Ordinance 00-O-1963, the City and Atlantic Station entered into a Water/Sewer Reimbursement Agreement dated February 19, 2001, a copy of which is attached hereto as Exhibit A (the "Agreement"); and

WHEREAS, by Ordinance 02-O-0092, which was adopted by the Council on February \_\_, 2002, and approved by the Mayor on February \_\_, 2002, the City appropriated \$11,770,000 in funds from the Water and Wastewater Bond Construction Fund for additional funding of the Improvements; and

WHEREAS, the City now wishes to authorize amendment of the Agreement to provide for payment of this additional reimbursement.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA  
HEREBY ORDAINS** as follows:

Section 1. The Mayor is authorized to enter into an Amended and Restated Water/Sewer Reimbursement Agreement with Atlantic Station, L.L.C. for reimbursement of an amount not to exceed \$11,770,000 for construction of the Improvements in the Atlanta Steel Brownfield Redevelopment Area.

Section 2. This reimbursement shall be made in addition to the \$10 million reimbursement authorized by Ordinance 00-O-1963, which shall otherwise remain in full force and effect.

Section 3. All expenses under this Amended and Restated Water/Sewer Reimbursement Agreement shall be paid from fund, account and center number 2J27 774001 M24I02569999.

Section 4. The City Attorney shall review and approve as to form an appropriate contractual agreement for execution by the Mayor.

Section 5. Said agreement shall not become binding on the City, and the City shall not incur any liability thereunder, until the agreement has been signed by the Mayor and delivered to Atlantic Station, L.L.C.

**WATER/SEWER REIMBURSEMENT AGREEMENT**  
**FOR ATLANTIC STEEL BROWNFIELD REDEVELOPMENT AREA**

This Water/Sewer Reimbursement Agreement ("Agreement") is made and entered into this 19<sup>th</sup> day of February, 2001 by and between the **CITY OF ATLANTA**, a municipal corporation organized under the laws of the State of Georgia ("City"), and **ATLANTIC STATION, L.L.C.** ("Atlantic Station"), a limited liability corporation organized under the laws of the State of Delaware.

**STATEMENT OF BACKGROUND**

1. The City of Atlanta, by Resolution No. 99-R-1344, which was adopted by the City Council on October 4, 1999 and signed by the Mayor on October 5, 1999, has designated the Atlantic Steel Brownfield Redevelopment Area, adopted a redevelopment plan, and created the Tax Allocation District Number Two -- Atlantic Steel (the "TAD") to facilitate to redevelopment of the area, the site of a former steel mill, into a mixed use community of homes, offices, shops, recreation, and hotels.

2. Atlantic Station has acquired the real property located in the redevelopment area and intends to develop the property in accordance with the Atlantic Steel Brownfield Redevelopment Plan, a copy of which is attached hereto as Exhibit A. The Plan provides that \$60,000,000 in road and utility infrastructure improvements will be funded by TAD proceeds (Exhibit A, page 29).

3. The redevelopment area currently contains virtually no useable water supply or sanitary sewer infrastructure. As part of the implementation of the redevelopment plan, Atlantic Station will construct the necessary water and sanitary sewer infrastructure within the redevelopment area. Upon completion, the infrastructure will be dedicated to the City for public use. The City has reviewed and approved Atlantic Station's plans and designs for the water and sanitary sewer infrastructure. The necessary expenditures for water and sanitary sewer infrastructure are estimated as follows:

Bypass CSO system	\$15,383,160
Water system	1,860,000
Sewer system	<u>3,997,140</u>
Total	\$21,240,300

The City has determined that these infrastructure improvements are necessary in order to permit the redevelopment specified in the redevelopment plan.

4. Atlantic Station had designed and begun construction on the water and sanitary sewer infrastructure improvements on its property. Upon completion, the improvements will be dedicated to public use in accordance with the terms of a Development Agreement and any other agreements to be executed by the City and Atlantic Station as needed to implement the redevelopment plan.

5. Pursuant to the redevelopment plan, the City is preparing to issue TAD bonds to finance, among other items, the water/sewer infrastructure in the redevelopment area. In order to facilitate the timely redevelopment of the Atlantic Steel Brownfield Redevelopment Area, the Mayor and City Council have authorized \$10,000,000 in interim financing for the water and sewer infrastructure by Ordinance No. 00-O-1963, a copy of which is attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, the City and Atlantic Station agree as follows:

1. Atlantic Station agrees to design and construct the water supply and sanitary sewer infrastructure needed in order to redevelop the property it owns within the Atlantic Steel Brownfield Redevelopment Area in accordance with the Atlantic Steel Brownfield Redevelopment Plan.

2. The City acknowledges that Atlanta Station's design for the water and sanitary sewer infrastructure has been reviewed and approved by appropriate City staff and that permits have been issued for construction of the improvements.

3. Pursuant to Ordinance No. 00-O-1963, the City has appropriated \$10,000,000 in water/sewer funds as interim financing for these redevelopment costs. The City agrees to make periodic progress payments to Atlantic Station for certain improvements to the System (as defined in the Master Bond Ordinance adopted by the Council and approved by the Mayor on March 31, 1999). Said payments will be made within ten (10) days of receipt of an invoice from Atlantic Station.

4. In accordance with Ordinance No. 00-O-1963, the funds appropriated from the Water and Sewer Renewal and Extension Fund as interim financing payable under this Agreement shall be reimbursed from proceeds of TAD bonds issued for the Atlantic Steel Tax Allocation District.

5. Entire Agreement, Modification. This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof. This Agreement shall not be modified or amended in any respect except by written instrument executed by or on behalf of the parties in the same manner as this Agreement is executed, and specifically referencing such modification or amendment.

6. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, successors, executors and assigns.

7. Severability. In the event any provision or portion of this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

8. Rights Cumulative. Except as expressly limited by the terms of this Agreement, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

9. Notices. All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by UPS Next Day Air, or by hand delivery by reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party may from time to time and at any time change its address for notices hereunder. Legal counsel for the respective parties may send to the other party any notices, requests, demands or other communications required or permitted to be given hereunder by such party.

To City:                      City of Atlanta  
   Commissioner of Public Works  
   55 Trinity Avenue  
   Atlanta, Georgia 30335

                                 and              City of Atlanta  
   Chief Operating Officer  
   55 Trinity Avenue  
   Atlanta, Georgia 30335

                                 and              City of Atlanta  
   Chief Financial Officer  
   55 Trinity Avenue  
   Atlanta, Georgia 30335

To Developers:              Atlantic Station, L.L.C.  
   1349 West Peachtree Street  
   Suite 1770  
   Atlanta, Georgia 30309  
   Attention: Derrick McSwain, Chief Financial Officer

with a copy to:              Sharon A. Gay, Esq.  
   Long Aldridge & Norman, LLP  
   303 Peachtree Street, N.E.  
   Suite 5300  
   Atlanta, Georgia 30308

and

Jeanna A. Brannon, Esq.  
Morris, Manning & Martin LLP  
1600 Financial Center  
3343 Peachtree Road, NE  
Atlanta, Georgia 30326

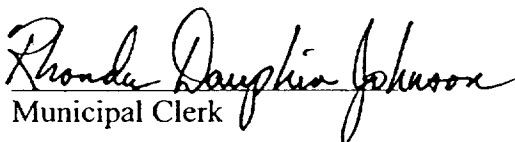
10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Agreement.

11. Governing Law. This Agreement, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the substantive laws of the State of Georgia.

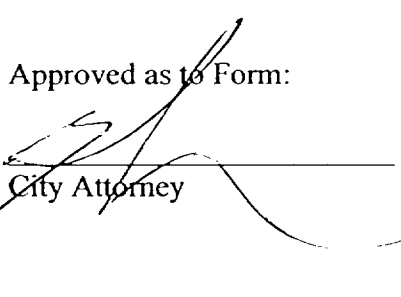
12. Time of Essence. Time is and shall be of the essence in this Agreement.

IN WITNESS WHEREOF, this Agreement is signed, sealed and delivered as of the Date of this Agreement.

Attest:

  
Municipal Clerk

Approved as to Form:

  
City Attorney

"CITY"

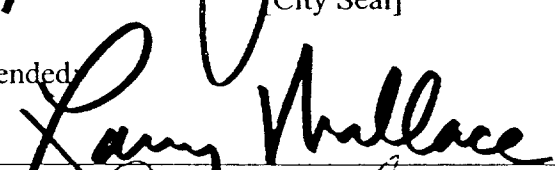
CITY OF ATLANTA, a municipal corporation  
organized under the laws of Georgia

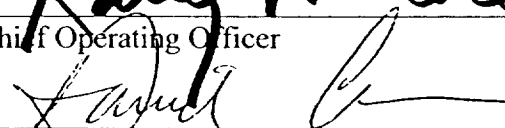
By:

  
Mayor

[City Seal]

Recommended:

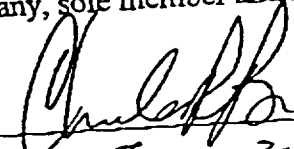
  
Chief Operating Officer

  
Chief Financial Officer

"ATLANTIC STATION"

ATLANTIC STATION, L.L.C., a Delaware  
limited liability company

By: Jacoby Atlantic Redevelopment,  
L.L.C., a Georgia limited liability  
company, sole member and manager

By:   
Paul R. Jacoby 2/15/01